

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA	)	Subcase No. 91-00005-34
	)	
Case No. 39576	)	(Basin-Wide Issue, Basin 34)
	)	(Remaining General Provisions Unique
	)	to Basin 34)
	)	
_____	)	

**ORDER SETTING TRIAL DATE, FINAL PRE-TRIAL CONFERENCE,  
DISCOVERY DEADLINES, AND PRE-TRIAL MOTIONS FOR BASIN-WIDE  
ISSUES 5-34 (GENERAL PROVISIONS UNIQUE TO BASIN 34) – I.R.C.P. 16**

**I.**

**DESCRIPTIVE SUMMARY**

This is a pre-trial and trial scheduling order for those issues regarding the general provisions previously designated as Basin-Wide Issues 5-34. Irrigation period of use was also included in Basin-Wide Issues 5-34, which is addressed in a separate order issued contemporaneously with this scheduling order.

**II.**

**PROCEDURAL BACKGROUND**

1. On January 18, 1996, Judge Hurlbutt, then Presiding Judge of the SRBA, issued an *Amended Order Designating Basin-Wide Issue No. 5*, which designated certain general provisions as Basin-Wide Issues. Also on that date, Judge Hurlbutt issued an *Order Designating Basin-Wide Issue No. 5B*, which designated certain general provisions unique to Basin 34 as Basin-Wide Issues, and referred these issues to Special Master Bilyeu.

2. On April 26, 1996, Judge Hurlbutt issued a *Memorandum Decision and Order Re: Basin-Wide Issue 5*.

3. On June 28, 1996, Special Master Bilyeu issued a ***Special Master's Report and Recommendation*** on Basin-Wide Issue No. 5B. Judge Hurlbutt adopted the ***Special Master's Report and Recommendation*** in full. ***Memorandum Decision*** (February 12, 1997).

4. Judge Hurlbutt's decision in Basin-Wide Issue 5 was appealed to the Idaho Supreme Court, which remanded to the SRBA District Court. ***A & B Irrigation District v. Idaho Conservation League***, 131 Idaho 411, 558 P.2d 568 (1998).

5. Judge Hurlbutt's decision in Basin-Wide Issue 5B was appealed to the Idaho Supreme Court, which remanded to the SRBA District Court. ***State v. Nelson***, 131 Idaho 12, 951 P.2d 943 (1998).

6. On December 9, 1998, Judge Hurlbutt issued an ***Order Requesting Supplemental Director's Reports from Idaho Department of Water Resources for Irrigation Season and Conjunctive Management General Provisions in Reporting Areas 1, 2 and 3.***

7. On June 24, 1999, IDWR filed its ***Supplemental Director's Report, Reporting Area 1, IDWR Basin 34, Regarding Revisions of the Following: Period of Use (for Irrigation Water Uses), Conjunctive Management General Provisions (Supplemental Director's Report).*** The deadline for objections to the ***Supplemental Director's Report*** was July 30, 1999.

8. On August 31, 1999, December 3, 1999, and December 20, 1999, this Court entered a series of three orders setting forth the procedural history and this Court's posture for resolving those general provisions previously designated as Basin-Wide Issues following the Idaho Supreme Court's remand in ***A & B Irrigation Dist. v. Idaho Conservation League***, 131 Idaho 411, 558 P.2d 568 (1998), ***State v. Nelson***, 131 Idaho 12, 951 P.2d 943 (1998), and ***State v. Idaho Conservation League***, 131 Idaho 329, 955 P.2d 1108 (1998). For a detailed discussion, see ***Order of Consolidation/Separation of Issues (Realignment and Redesignation of Issues) of Basin-Wide Issues 5, 5A and 5B; AOI § 11*** (Aug. 31, 1999); ***Amended Order of Consolidation/Separation of Issues (Realignment and Redesignation of Issues) of Basin-Wide Issues 5, 5A and 5B; AOI §***

*II* (Dec. 3, 1999); *Second Amended Order of Consolidation/Separation of Issues (Realignment and Redesignation of Issues) of Basin-Wide Issues 5, 5A and 5B; AOI § II* (Dec. 20, 1999). In the August 31, 1999, *Order*, this Court realigned and redesignated the issues by particular Basin (*i.e.*, Basin 34, 36, and 57).

9. On November 10, 1999, this Court entered an order requiring all parties participating in this subcase (no. 91-00005-34) to file more definite statements identifying the issues raised in the objections/responses and how the recommended general provisions could be rewritten to satisfy the objections/responses. Following receipt of the more definite statements filed by the parties, this Court entered an order requiring IDWR to file a “706 Report” in response to the issues raised by the parties in their more definite statements.

10. On March 27, 2000, pursuant to the Court’s Order, IDWR filed a “706 Report” in the form of a *Supplemental Director's Report* which addressed the issues raised by the parties.

11. On April 11, 2000, after notice to all parties, IDWR held a “virtual tour” and field trip to enable the Court and interested parties to view the premises which are the subject of each of the proposed general provisions. I.R.C.P. 43(f).

12. On May 23, 2000, a scheduling conference was held in the above-captioned subcase. This Order is entered pursuant to the scheduling conference.

### **III.**

#### **SCOPE OF PROCEEDINGS**

At issue are five remaining issues relating to the general provisions unique to Basin 34 as recommended by IDWR. These five remaining issues have been designated as follows:

- General Provision 1 – “Definitions”
- General Provision 2 – “2B Gage and stockwatering during irrigation season”
- General Provision 3 – “Rotation with storage”
- General Provision 4 – “Backchannel”
- General Provision 6 – “Howell Gage – connected/non-connected”

The Court was informed via a settlement conference report filed by Special Master Cushman on May 12, 2000, that general provision 5 designated as “separate streams” was recently settled and that the parties are in the process of circulating a stipulation. Therefore, until further order of the Court, general provision 5 “separate streams” is not proceeding on the schedule herein set forth. Also, general provision 7 designated as “conjunctive management” was previously redesignated as Basin-Wide Issue 5 (subcase no. 91-00005), and is not before the Court in this subcase.

The “irrigation period of use” provision was also previously designated as a Basin-Wide 5-34 issue. The provision is addressed in a separate order issued contemporaneously with this Order. See *Order Setting Status Conference Regarding Objections to Beginning and Ending Dates of Irrigation Period of Use for Basin 34*. However, it is intended that the “global” objections referenced in the separate order be subject to this scheduling order. Therefore, with the exception of any “global” objections, and until further order of the Court, the irrigation period of use issue is not proceeding in accordance with the schedule herein set forth.

#### IV.

#### SETTLEMENT EFFORTS

On April 28, 2000, this Court issued an *Order Appointing Special Master Cushman as Settlement Facilitator for Remaining Basin-Wide Issues 5-34*, requiring the mandatory participation by the parties in the settlement proceedings. It was intended by the Order that any settlement efforts proceed independently of the litigation track set forth herein (*i.e.*, a “dual track” basis). Therefore, this Order in no way affects those ongoing settlement efforts.

#### V.

#### FORMAT OF COURT TRIAL

As discussed at the scheduling conference, although all remaining issues will be heard in the same continuous proceeding, the Court will segregate each general provision

for purposes of the trial. Evidence and legal argument will be taken in turn on one proposed general provision at a time. Once all evidence and legal argument has been taken on a general provision, the Court will proceed to the next provision. Parties should be prepared to present their cases accordingly.

## VI.

### SCHEDULING ORDER

**1. Date Requirements in this Order:** Any date requirement indicated herein which falls on a Saturday, Sunday, or court holiday, the due date shall be the next day which is not a Saturday, Sunday, or court holiday. I.R.C.P. 6(a).

**2. Trial Date:** IT IS ORDERED that a trial in the above-captioned consolidated subcase shall commence on **Monday, February 5, 2001, at 9:00 a.m. at the Memorial Building, 326 West Grand, Arco, Idaho**, and continue on each business day thereafter until the trial is completed (with the exception of February 20, 2001, which is the regularly-scheduled SRBA monthly status conference date).

**3. Final Pre-Trial Conference:** Pursuant to I.R.C.P. 16(d), IT IS ORDERED that a final pre-trial conference will be held on **Thursday, January 18, 2001, at 10:00 a.m. at the Memorial Building, 326 West Grand, Arco, Idaho.**

**4. Pre-Trial Discovery Served and Responses Completed:** IT IS HEREBY ORDERED that with the exception of the schedule for witness disclosure which is governed by item number 5 below, including but not limited to the taking of all depositions of all lay and expert witnesses, all interrogatories, requests for production/inspection and requests for admissions, **shall be served no later than 5:00 p.m., Friday, September 29, 2000.**<sup>1</sup>

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<sup>1</sup> Parties are reminded that IDWR is not a party to the SRBA and therefore may not be served with interrogatories as a means of discovery pursuant to I.R.C.P. 33(a).

All discovery **shall be completed no later than 5:00 p.m., Friday, December 15, 2000.** By completed, it is meant that all depositions shall actually be taken, interrogatories answered, and/or supplemented, requests for production/inspection completed, and requests for admissions answered.

Motions to compel shall be filed so as to accommodate the time requirements of this provision.

## **5. Witness Disclosure:**

**5.1: Lay Witnesses:** IT IS ORDERED that disclosure of all lay witnesses, except lay impeachment witnesses, be completed between the parties no later than **5:00 p.m., Friday, September 29, 2000.** All non-disclosed lay witnesses, except impeachment witnesses, shall be excluded from testifying in the trial of the action unless permitted by the trial court in the interest of justice. I.R.C.P. Rule 16(e)(6)(J).

**5.2: Expert Witnesses:** IT IS ORDERED that disclosure of all experts, except rebuttal experts, **shall be completed no later than 5:00 p.m., Friday, October 6, 2000.** Disclosure of any rebuttal experts (not experts for the case in chief) **shall be completed no later than 5:00 p.m., Monday, October 16, 2000.** All non-disclosed expert witnesses, except impeachment witnesses, shall be excluded from testifying in the trial of the action unless permitted by the trial court in the interest of justice. I.R.C.P. Rule 16(e)(6)(J).

**6. Exhibits:** Each party shall produce for examination by all other parties all exhibits, except impeachment exhibits, which will be offered into evidence at the trial no later than **5:00 p.m., Friday, December 15, 2000.** I.R.C.P. Rule 16(e)(1).

IT IS HEREBY FURTHER ORDERED that the pre-trial memorandum/statement contain a descriptive list of all exhibits proposed to be offered in evidence by that party reciting

which exhibits shall be received in evidence without objection and those to which no objection will be made on grounds other than irrelevancy or immateriality. I.R.C.P. Rule 16(e)(1) and 16(e)(6)(H).

IT IS HEREBY FURTHER ORDERED that a party shall not offer any exhibit(s) at the trial other than those listed in accordance with the above paragraphs, except when offered for impeachment purposes, or when otherwise permitted by the trial court in the interest of justice. I.R.C.P. Rule 16(e)(6)(I). If any exhibits are discovered after the December 15, 2000, disclosure to the Court and the opposing party shall be made immediately by filing and service of such notice and exhibit, stating the date of the discovery. I.R.C.P. Rule 16(h).

IT IS HEREBY FURTHER ORDERED that all exhibits relevant to trial, except impeachment exhibits, shall be pre-marked at least two (2) days prior to the scheduled pre-trial date. Arrangements for marking said exhibits **and for exhibit number assignments** can be made through the Deputy Clerk of the Court at 208-736-3011, 8:00 a.m. – 5:00 p.m., Monday through Friday, excluding holidays.

**7. Pre-Trial Motions:** IT IS ORDERED that all pre-trial motions, including motions for summary judgment and other dispositive motions, evidentiary issues and motions in limine, **shall be filed and noticed for hearing prior to the final pre-trial conference, and shall not be heard on the day of the final pre-trial conference.**

Pre-trial motions shall be supported and opposed by briefs citing the applicable law relevant to the issue being heard. Affidavits, if appropriate, may also be filed to support or oppose any motion if evidence is to be offered on a motion pursuant to I.R.C.P. 43(e). Adequate notice shall be provided to all parties and the Court so that sufficient time can be allotted for the hearing.

**8. Post-Hearing Briefing:** Following the evidentiary hearing, the Court will allow time to submit additional briefing at the request of the parties or if the Court concludes that additional briefing would be beneficial.

**VII.  
SUMMARY OF DEADLINES**

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| <b>1. 5:00 p.m., Friday, September 29, 2000</b>  | <b>Pre-Trial Discovery Served<br/>Lay Witnesses Disclosed</b> |
| <b>2. 5:00 p.m., Friday, October 6, 2000</b>     | <b>Expert Witnesses Disclosed</b>                             |
| <b>3. 5:00 p.m., Monday, October 16, 2000</b>    | <b>Rebuttal Experts Disclosed</b>                             |
| <b>4. 5:00 p.m., Friday, December 15, 2000</b>   | <b>Discovery Completed</b>                                    |
| <b>5. Prior to Thursday, January 18, 2001</b>    | <b>Pre-Trial Motions Heard</b>                                |
| <b>6. 10:00 a.m., Thursday, January 18, 2001</b> | <b>Final Pre-Trial Conference</b>                             |
| <b>7. 9:00 a.m., Monday, February 5, 2001</b>    | <b>Trial Date</b>   |

IT IS SO ORDERED:

DATED: JUNE 13, 2000.

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BARRY WOOD  
Administrative District Judge and  
Presiding Judge of The  
Snake River Basin Adjudication